



ԵՎՐՈՊԱԿԱՆ ՄԻՈՒԹՅՈՒՆԸ ՀԱՅԱՍՏԱՆԻ ՀԱՄԱՐ
EUROPEAN UNION FOR ARMENIA

ԱՐԺԱՆԱՊԱՏԻԿ
ԱՇԽԱՏԱՆԸ
ՀԻՄՆՍ

DECENT
WORK
NOW

**Guarantee of non-discrimination
at workplace and international
legal regulations**





Prohibition of discrimination is enshrined in Article 2 and 26 of the International Covenant on Political and Civil Rights, Article 2§2 and Article 3 of the International Covenant on Economic, Social and Cultural Rights, Article E of the Revised European Social Charter (hereinafter referred to as “Charter”), Article 2 of the Geneva Convention on Discrimination in the Field of Work and Employment, Article 21 and Article 23 of the Charter of Fundamental Rights of the EU. Prohibition of discrimination defined in the said international legal documents also includes exclusion of sex-based discrimination in labor relations. At the same time, prohibition of discrimination has also been enshrined in domestic legislation, namely Article 29 of the RA Constitution, Article 3.1 of the RA Labor Code (under the RA Law on Making an Addendum to the RA Labor Code, Article 3.1 was added to the RA Labor Code, whereby labor legislation established prohibition of discrimination), Article 6 of the RA Law on Ensuring Equal Rights and Equal Opportunities for Women and Men (hereinafter also referred to as “the Law”).

Despite all this, there are still reports that in labor relations, when employers make decisions on employment, organization of remuneration, leave, ensuring other safeguards under the Labor Code, use of disciplinary liability, and dismissals, the relevant employee’s sex is also taken into account, which is contrary to requirements of the RA labor legislation and international agreements.

In particular, Article 21 and Article 23 of the Charter of Fundamental Rights of the European Union **prohibit any discrimination based on sex and**

provides for equality between men and women in all areas, including employment, work and pay.

Article 2 of the Geneva Convention on Discrimination in the Field of Work and Employment specifies that **each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.**

According to comments of the European Committee of Social Rights (hereinafter referred to as “the Committee”) on the Charter provisions, part 2 of Article 1 of the Charter include three main components:

1) prohibition of all forms of discrimination in labor relations,

2) prohibition of forced or compulsory work,

3) prohibition of any practice interfering with the right of an employee to the opportunity to gain his living by work which he freely chooses.

Under the Committee’s conclusions of 2016 on Armenia (2016/def/ARM/1/2/EN)¹ the Committee concludes that the situation is not in conformity with the Charter on the grounds that the indirect discrimination is not defined and prohibited by the legislation and discrimination in connection with recruitment in employment is not prohibited. The same issues were recorded in the Committee’s conclusions of 2020 on Armenia.² While an Article related to prohibition of

¹ <http://hudoc.esc.coe.int/eng?i=2016/def/ARM/1/2/EN>

² <http://hudoc.esc.coe.int/eng?i=2020/def/ARM/1/2/EN>

discrimination was added to the RA Labor Code In 2019, we find that it does not fully address issues raised by the Committee's conclusions of 2016.

In particular, it was recorded in the conclusions that there is no clear and comprehensive definition and prohibition of direct and indirect discrimination covering all aspects of employment and occupation, including recruitment. Legislation should prohibit both direct and **indirect discrimination and discrimination should be prohibited in connection with recruitment or with employment conditions in general (remuneration, training, promotion, transfer and dismissal and other detrimental action)**. While, according to part 2 of Article 3.1 of the RA Labor Code, discrimination is considered to be any direct or indirect distinction, exclusion or limitation based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, worldview, political or any other opinion, membership of a national minority, property, birth, disability, age or other conditions of personal or social nature the purpose or effect of which is less favorable treatment when establishing and/or modifying and/or terminating collective and/or individual labor relations or the prohibition or denial of recognition and/or exercise of any right established by labor law on an equal basis with others, except for cases where such distinction, exclusion or limitation is objectively justified by the pursued legitimate goal, and means used to achieve the goal are proportionate and necessary.

Among the above-mentioned legal regulations, there is no definition of indirect discrimination. In addition, the **RA Labor Code does not fully establish prohibition of manifestation of probable discrimination during the recruitment stage**. Part 2 of Article 3.1 of the Code prohibits manifestation of

a less favorable attitude in cases of establishing collective and/or individual labor relations (...)³, while part 3 prohibits establishing any condition that is a basis of discrimination only in vacancy announcements (competitions), whereas **discrimination can be manifested in various ways during the recruitment stage and is not limited to overt discriminatory conditions in vacancy announcements**. Moreover, Article 3.1 of the Code defines prohibition of discrimination in connection with manifestation of a less favorable treatment or prohibition of recognition and/or exercise of any right under the labor legislation, while labor rights can also be established in collective and employment contracts, and internal legal acts. **Therefore, prohibition of discrimination is also incomplete in terms of the frame of rights it covers⁴.**

According to the results of the study conducted in the frame of the project “Labour Action: Collaborative Effort for Accountable and Inclusive Employment”, respondents **specified the fact of being female among cases of labor rights violations both during job search and while working⁵**. The research specifies that labor rights of female employees are most violated, which implies a **distinguished attitude towards women in matters of recruitment, promotion, pregnancy and child care, which is considered sex-based discrimination⁶**.

According to comments of the Committee⁷ **national legislation should establish proportionate and effective remedies in case of discrimination.**

³ Meaning prohibition of discrimination in already initiated labor relations

⁴ <https://hcav.am/labor-rights-research/>

⁵ See the research for specific cases of women’s labor rights violations

⁶ http://www.translation-centre.am/pdf/Translat/EU_Direct/Social/DIR_2006_54_am.pdf

⁷ <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>

✓ First, in case of alleged discrimination, the right to apply to court must be enshrined. In cases of manifestation of discrimination in labor relations, recognition of the right of trade unions to take action (including applying on behalf of an individual), as well as granting interested groups the right to take collective action (in relation to obtaining a decision on a violation of discrimination prohibition) also contributes to the fight against discrimination according to part 2 of Article 1 of the Charter.

✓ Second, protection should be provided against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action;

✓ Third, domestic law should provide for an alleviation of the burden of proof in favor of the plaintiff in discrimination cases.

✓ Fourth, remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Therefore, compensation for all manifestations of discrimination, including cases of discriminatory dismissals, should be proportionate to the damage suffered by the victim of discrimination and sufficiently dissuasive for the employer. Establishment of a maximum compensation threshold contrary to the above-mentioned criteria is prohibited.

In contrast to the aforementioned, the RA legislation does not envisage **a procedure for distributing the burden of proof in favor of the plaintiff in all cases of manifestations of discrimination in labor relations.**

The Charter requires, in the event of **any** violation of the prohibition of discrimination, adequate compensation that is a sufficient deterrent to

employers and proportionate to the damage suffered by the victim. Study of the **RA Labor Code** indicates that **the legislation does not provide for a full mechanism of compensations as required by the Charter in case of manifestations of discrimination in labor relations**⁸. Thus, Article 265 of the RA Labor Code establishes a procedure for the employer to pay a minimum salary for the whole period of forced idleness or the difference of the salary for the period where it is revealed that employment conditions have been changed, employment contract with the employee rescinded upon absence of lawful grounds or in violation of the procedure defined by the legislation. In case of impossibility of reinstatement of employment relations between the employer and the employee the court obliges the employer to pay compensation for the entire period of forced idleness in the amount of the average salary, and pay compensation in exchange for non reinstatement of the employee to office in the amount of not less than the average salary, but not more than twelve-fold of the average salary.

Thus, payment for forced idleness, as well as compensation in case of impossibility of reinstatement are related exclusively to cases of unlawful dismissals, **while discrimination in labor relations can be manifested in a number of other ways not related to termination of employment contracts, in case of which the RA legislation does not envisage any opportunity for compensation**. In addition, in cases of unlawful dismissals (which can also imply dismissals on discriminatory grounds) there is a maximum threshold of compensation (not more than twelve-fold of the average salary), which was recognized as contradicting the Charter

⁸ <https://hcav.am/labor-rights-research/>

requirements under conclusions⁹ of the Committee issued in 2016 and 2020 with respect to Armenia. Therefore, linking this compensation exclusively with impossibility of reinstatement is also problematic¹⁰.

Legal regulations under the RA Law on “Ensuring equal rights and equal opportunities for women and men” contain **direct and indirect gender discrimination**, which, in their turn, are divided into certain forms: forms of discrimination directly referring to gender (**direct discrimination**) include discrimination based on marital status, pregnancy and performance of family responsibilities, different pay for the same or equivalent work, any change in pay (increase or decrease) or deterioration of working conditions based on gender, when, based on their gender, a person was subjected, is subjected or can be subjected to a worse or less favorable treatment in the same or similar situation (Article 3, Article 6, part 2).

According to the law, forms of discrimination not directly referring to gender (**indirect discrimination**) include... establishment of conditions and requirements that have caused or can cause negative consequences in the form of damage to persons of a certain sex (Article 3, Article 6, part 2).

The aforementioned allows to record that the Law **establishes prohibition of direct discrimination in legal labor relations only in matters of pay, pay change (increase or decrease) and deterioration of labor conditions, at the same time prohibiting indirect discrimination in all public life spheres, including labor sphere, especially through establishment of conditions and requirements that**

⁹ <http://hudoc.esc.coe.int/eng?i=2016/def/ARM/1/2/EN>,
<http://hudoc.esc.coe.int/eng?i=2020/def/ARM/1/2/EN>

¹⁰ <https://hcav.am/labor-rights-research/>

have caused or can cause negative consequences in the form of damage to persons of a certain sex.

Amendments made to the Labor Code in 2023 also envisage prohibition of violence and sexual harassment at workplace (Article 3.3), however, the legislation does not establish liability for sexual harassment.

Thus, we record that legal regulations under the RA domestic legislation establishing equal attitude towards women in matters of labor and occupation are not in conformity with the full, comprehensive and international legal regulations undertaken by the state, which can lead to violation of women's labor rights, while general provisions establishing prohibition of discrimination do not establish an opportunity of effective remedy, since they lack the necessary principles, legal regulations and standards necessary for effective remedy.

Equal treatment of men and women in matters of employment and occupation cannot be restricted to legislative measures. Instead, the State should continue to promote the raising of public awareness of discrimination and the changing of public attitudes. The State shall also encourage employers to provide at appropriate regular intervals employees and/or their representatives with appropriate information on equal treatment for men and women in the undertaking¹¹.

This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of Helsinki Citizens' Assembly-Vanadzor and do not necessarily reflect the views of the European Union.

¹¹ http://www.translation-centre.am/pdf/Translat/EU_Direct/Social/DIR_2006_54_am.pdf



DECENT
WORK
NOW

ԱՐԺԱՆԱՊԱՏԻՎ
ԱՇԽԱՏԱՆԵ
ՀԻՍՏ

Who to apply when your labor rights have been violated?

**Health and labor
Inspection body:**

Hotline: 81-07

Electronic application link:

www.employeeprotect.am/am/repor

**Helsinki Citizens'
Assembly-Vanadzor**

Free legal consultation: 077 342268

Electronic application link:

www.facebook.com/DecentWorkNow

www.arhmiutyun.am/contact

Human rights defender

Hotline: 116

Regional offices

www.ombuds.am/am/site/ApplyTeamAdress

**Ministry of Labor and
Social affairs**

Hotline: 114

Electronic application link

www.e-request.am/hy

